

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 LAFAYETTE DEAN BROOKS and
4 WELTON THOREN MYERS,

5 Plaintiffs

6 v.

7 KIMBERLY WANKER and U.S. BANK
8 TRUST N.A.,

9 Defendants

Case No.: 2:19-cv-00973-APG-CWH

**Order Denying Motion for Summary
Judgment**

[ECF No. 12]

10 Plaintiffs Lafayette Brooks and Welton Myers sued defendants Kimberly Wanker and
11 U.S. Bank Trust, N.A. for alleged constitutional rights violations related to a judicial proceeding
12 in Nevada state court. ECF No. 1. The plaintiffs move for summary judgment against defendant
13 U.S. Bank Trust. I deny the motion without prejudice as premature because the plaintiffs have
14 not shown they properly served U.S. Bank Trust with a summons and the complaint.

15 Federal Rule of Civil Procedure 4(c)(1) requires a plaintiff to serve the defendant with a
16 summons along with a copy of the complaint. The docket does not reflect a summons being
17 issued for U.S. Bank Trust. The plaintiffs thus have not properly served U.S. Bank Trust
18 because they have not served it with a summons.

19 Moreover, the plaintiffs' means of attempted service is improper. Under Federal Rule of
20 Civil Procedure 4(h)(1), a corporation or association must be served in the manner that
21 individuals are served pursuant to Rule 4(e)(1) or by "delivering a copy of the summons and of
22 the complaint to an officer, a managing or general agent, or any other agent authorized by
23 appointment or by law to receive service of process" Individuals may be served by:
(1) following the laws governing service of process in the state where the district court is located

1 or where service is made; or (2) delivering a copy of the summons and complaint to the
2 individual personally, an authorized agent, or a person of suitable age and discretion residing
3 with the individual. *See* Fed. R. Civ. P. 4(e). Nevada law requires personal service of the
4 summons and complaint to individuals by any of these same personal delivery methods
5 authorized, but not regular or certified mail. Nev. R. Civ. P. 4(d)(6). Consequently, a plaintiff
6 cannot serve a defendant by certified mail under either federal or Nevada law. The plaintiffs'
7 attempts to serve U.S. Bank Trust by certified mail therefore was defective. *See, e.g., Johnson v.*
8 *Clark Cty. Sch. Dist.*, No. 2:14-cv-02213-JAD-VCF, 2016 WL 3156059, at *1 (D. Nev. June 3,
9 2016); *Cabrera v. Las Vegas Metro. Police Dep't*, No. 2:12-CV-00918-RFB-CWH, 2014 WL
10 6634821, at *2-3 (D. Nev. Nov. 21, 2014).

11 Even if certified mail could suffice, the plaintiffs do not provide signed certified returns
12 and there is no evidence that anyone who signed the certified return receipts are individuals
13 qualified under the Rule to accept service on behalf of this defendant.


14 Finally, the plaintiffs provide a signed statement allegedly from an employee of the law
15 firm Ballard Spahr to indicate she received a “[c]hallenge of jurisdiction and notice of void
16 judgment due to lack of jurisdiction” on March 5, 2019. ECF No. 12 at 110. That pre-dates the
17 complaint in this action, so that cannot count as service of the complaint. Additionally, there is
18 no evidence that the law firm employee is an individual authorized to accept service on behalf of
19 U.S. Bank Trust.

20 In sum, the plaintiffs have not shown they properly effected timely service on U.S. Bank
21 Trust. Proof of service was due by September 5, 2019. Consequently, I will dismiss this action
22 without prejudice unless the plaintiffs can show good cause to extend the deadline to properly
23 effect service on U.S Bank Trust. *See* Fed. R. Civ. P. 4(m).

1 IT IS THEREFORE ORDERED that the plaintiffs' motion for summary judgment (**ECF**
2 **No. 12)** is **DENIED**.

3 IT IS FURTHER ORDERED that **on or before September 30, 2019**, the plaintiffs may
4 file a motion to extend the deadline to serve defendant U.S. Bank Trust. In that motion, the
5 plaintiffs must show good cause to extend the deadline. Failure to do so by that date will result
6 in the dismissal without prejudice of the plaintiffs' remaining claims.

7 DATED this 9th day of September, 2019.

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11 ANDREW P. GORDON
12 UNITED STATES DISTRICT JUDGE
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